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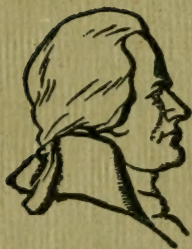


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[Modern business talk]

# THE LAW AND YOU

Business is touched at every point by the law. Every point has its possibilities for danger or protection. Avoid loss of time, effort and money by knowing what these are.



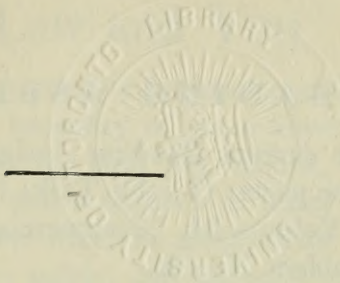
MODERN BUSINESS  
TALK No. 48

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ALEXANDER HAMILTON INSTITUTE  
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# The Law and You



Number Forty-eight of a Series of Modern  
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## READING ASSIGNMENT

The current Reading Assignment consists of three parts: (1) this Talk; (2) Pages 178-325 of Volume 24, "Commercial Law", and (3) Problem No. 24.

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With this last assignment of the Text you are about to complete your Course in Modern Business. To do so cannot fail to give you satisfaction, entirely apart from the sense of benefits received, because it is no small thing to have remained resolute and faithful to the end in a matter involving so much of application and self-denial. As you have sown, so will the harvest be. But there must be other sowings for other harvests. Your Modern Business volumes have shown themselves "guides, counselors and friends." Don't go back on them. Continue your consultations. Test your knotty problems by them. Reread a volume now and then to keep your knowledge well organized. Remember, facts, methods, policies come and go, but principles are changeless.

# The Law and You

Even after the progressive business man has realized the imperative necessity of some knowledge of law and has cleared the first big hazard, which is contracts, there are still a number of lesser obstructions and dangers over which he must hurdle in order to reach comparative safety, and the most important of these are bailments, negotiable instruments and the relation of principal and agent. The last two are well enough understood—bailment is the legal term that covers the situation where we take goods in keeping for another, or place them in trust for ourselves. All three are so much a part of everyday business life that if a lawyer's advice were required for every instance occurring we would be running after him perpetually.

## FINDING A SAFE PLACE FOR THE GOODS

Two young business men in a small city had planned to operate a women's clothing store. Various delays had postponed the date of occupancy and a few days before the scheduled opening found them with a store still reeking with paint and varnish and no safe place either up or down stairs to put the incoming shipments of silk waists, cloaks and suits which they had bought and for most of which they had paid.

The logical thing to do under the circumstances was to rent a room for a week or month in the big brick storage warehouse on the next street. They were quicker in deciding to do so from the fact that there had been a series of mysterious burglaries in the business district during the previous three or four months and they felt that the goods would be more secure in the keeping of the well-defended and well-guarded warehouse owned by a responsible company than in the unoccupied store exposed to both burglary and spoilage.

"They're safe there, I think", said one of the partners.

And so it was agreed and done. Space in the warehouse was taken for a week, but the young men had no intention of occupying it for more than two days.

That same night, however, or rather early the next morning, burglars broke into the warehouse and stole a lot of goods, among them the larger and more valuable part of the young partners' stock for their new store. The burglars had first started a fire in a nearby section of the town, which had drawn off one of the warehouse watchmen, and they had sandbagged the other. Then they had nonchalantly proceeded to back two large motor cars up to the door and help themselves.

When the partners learned about it later that morning they were tremendously excited. The loss of the stock would occasion another delay, the very thing they had tried to guard against. But after

cooling down, they began to think of replacing the stock. Fortunately, they felt, the storage warehouse company was thoroly reliable. Doubtless they could effect a quick settlement with it, and with that in mind they sought the manager.

"Settlement?" asked the manager. "Settlement of what?"

"Why, the loss of our stock", exclaimed the partners in unison.

"Why do you ask me?" replied the manager. "Didn't you have it insured? We are not responsible. We never insure goods, not even against fire, as you ought to know. All we do is to furnish space and reasonable care. That's all the law requires."

The partners flourished the warehouse receipt, but all it said was that the bailee agreed to restore the goods on demand in as good order as they were received. Nothing was said about loss by burglary or even fire.

They sought a lawyer. He gave them equally cold comfort. The warehouse manager, he said, was right. He was not responsible for the loss, since the burglary "could not have been prevented by reasonable care." Other merchants had taken out burglary insurance; why had they not done so?

There was no answer. The stock was never recovered and the store never opened.

Every man occasionally finds himself in the position of bailor or bailee. Sometimes this relation is forced upon one by circumstances. If you find an article, you become bailee to the rightful owner; if a

man asks you to keep something for him while he is on his vacation, he makes you his bailee; if you hire a horse and carriage, again you become a bailee. The peculiar obligations arising as a result of a bailment should be understood if you would avoid legal difficulties and financial loss.

## NEGOTIABLE INSTRUMENTS

We do many things so often and so easily that we forget that they involve questions of law. Often we do them simply because we see others do them, without a thought of danger until we find ourselves in difficulty. Take, for example, the matter of negotiable instruments.

There are few of us who do not have occasion to give or accept checks. Many find it necessary to give or take promissory notes, or are called upon to honor sight drafts or bills of exchange. These transactions require familiarity with the laws governing negotiable instruments.

Who is a "holder in due course?" When is an instrument void for defect? When is an endorser liable? It would be inconvenient and should be unnecessary to visit a lawyer every time we are called upon to answer one of a score of questions bearing on negotiable instruments. Yet very few business men know all the answers.

It was with much chagrin that a number of business men admitted this in a discussion following the recent annual dinner of a society organized for the

promotion of business efficiency. A group of men had lingered for informal talk.

### THE WAGER

One of the men, an engineer, had just remarked that business men are better informed nowadays about their business than formerly.

"If you think that applies to law, Mr. Stanley", said a lawyer, smiling, "I'm willing to put it to an immediate test on this—this unusually august body. I'm willing to wager a good cigar that not three men in this room can distinguish between negotiable and unnegotiable paper."

"I'll take you on that bet, Mr. Cross", said Stanley; "but how are we going to determine such a matter?"

"That's easy", said Cross. "Gentlemen, Stanley and I have a question to settle in regard to negotiable instruments, and we need your assistance. Will you give it?"

At the sound of the lawyer's voice, the hum of conversation ceased, and faces turned questioningly toward the speaker.

"What's the idea, Mr. Cross? Do you forget that we are just plain business men and not legal lights?"

"True, Mr. Teller", replied the lawyer, "but this is not a question of legal distinctions. It is merely one of business practice. Every business day you gentlemen handle a great many checks which come to you. In this respect you are more fortunate than we lawyers."

"The difference is", said one of the group, "that they pass thru our hands, but when they come to you they usually stick."

Laughing, they sat down to listen.

### DETERMINING THE WINNER

"This case came to my attention not long ago", said Cross. "A note, properly made out, had been obtained by fraud and shortly afterward delivered as a gift to a woman, a relative of the illegal holder. Upon presentation of the note by her, payment was refused on the ground that it had been obtained by fraud. Was the woman entitled to the payment of the note?"

There was silence for a moment. The company scented a "catch."

"Not if it was obtained by fraud", came cautiously at last from one of the company.

"Did she know it had been fraudulently obtained?" asked another.

"No", answered the lawyer, "there was no evidence to show that the woman had any knowledge of the wrongdoing."

"Then she certainly could collect the amount of the note", resumed the second speaker, "for, as everyone knows, when a promissory note comes into the hands of an innocent third party, it can be collected, no matter how it was obtained originally."

"Impossible!" indignantly exclaimed another voice. "How can a person give away what does not belong to him? A note obtained by fraud is no more

the property of the swindler than a watch stolen from your pocket becomes the property of the thief."

"Certainly not!" came from three or four at once.

"Yes, it does!" the former speaker asserted. "I can convince you by telling you of a clever trick that was pulled off near my home less than three months ago. On a dark, rainy night, a presentable individual knocked at the door of a wayside cottage, and asked for a night's lodging. He volunteered the information that he was a minister, temporarily without a charge, and on his way to some distant point. His request was granted and it was not long before it appeared that his host and hostess were of the same religious faith as he, and their confidence in him was fully established.

"Toward midnight the house was again disturbed by knocks on the door, and our generous host was requested to direct a timid young man and as timid a young woman to a clergyman, as they wanted to get married without delay. The guest for the night was called, but he refused to perform the ceremony without witnesses. Pleading on the part of the young man met with stern refusal, and finally he asked the man and woman of the house to act as witnesses. They expressed their willingness to help a young couple on the way to happiness. The minister quickly tied the knot. He presented a paper, purporting to be a marriage certificate, to the man and woman for attestation. They failed to read the contents and unhesitatingly added their signatures. The young bride and groom departed, most grateful. The fol-

lowing morning, after a substantial breakfast, the clergyman went on his way, thankful for the hospitality shown him.

"Three months later the hospitable pair learned that a note bearing their joint signatures was at the bank for payment. It turned out that the signatures were those that were affixed to the supposed marriage certificate on that evening when the clergyman honored them with his visit. Well, sir, the old gentleman had to pay the note, notwithstanding the fraud under which it had been obtained, since an 'innocent third party' had come into the case."

"If that is the law, it is queer justice", said one. "How about that, Mr. Cross?"

"Evidently the signers of the note did not exercise due caution, and they are responsible for their carelessness as against a 'holder in due course.' But in the case I cited a little while ago the woman failed to collect the amount of the note."

"Where is the difference between the two cases?" exclaimed the former objector. "If the law permitted the collection of the note obtained by the clergyman, it is unfair to the lady, who was unaware of any wrongdoing, to deny her payment of the note. She was as much an 'innocent third party' as the others."

### FIRST ROUND GOES TO LAWYER

"Well, I'll tell you why", smilingly remarked the lawyer. "The woman was not a holder for value. She obtained the note as a gift, and the law demands that under the circumstances the holder shall be a

holder for value. That's the difference, gentlemen. Mr. Stanley, please score one for me!"

"I guess it's your round all right", admitted Stanley.

"Now we'll suppose that this woman had obtained the note in compensation for value rendered, and that she in turn transferred it for value to a person who knew that the note had been obtained originally by fraud. Could the latter collect on the note?"

"Now, really", exclaimed one of the group with full assurance, "you don't have to know much law to know that. You say this man knew the note was obtained originally by fraud. Surely he could not claim to be an innocent party. Rather he is a guilty party. Not only will the law refuse to pay this man the amount of the note, but it will send him to prison for his part in the deal."

"With due respect for your judgment, I must inform you that the law permits the unprincipled person to collect the amount of the note."

"Mr. Cross, are you serious? How can that be?"

"That seems very unfair!"

### LAWYER TAKES SECOND ROUND, TOO

"Despite the apparent injustice of this provision", the lawyer continued, "the law nevertheless protects a transferee from a holder in due course. As such the person who received the note from the woman, even with guilty knowledge of its origin, will be protected in his effort to collect the amount thereof."

"How strange! Nothing will now surprise me!"

"It appears to be your round again", said Stanley.

"But suppose now, gentlemen", continued Cross, "that this woman had presented the note as a gift, rather than transferred it for value, to the man who had knowledge of the fraudulent origin. What would happen?"

"In view of what you have already said with regard to the necessity of being a holder for value, it is very evident that this man couldn't collect on the note. He gave no value for it, had knowledge of its fraudulent origin and should receive nothing for it."

"You all concur?"

"Call it unanimous this time", said one who had been twice mistaken in his judgment.

"Very well, you are unanimously wrong. He may recover. Don't accuse me of contradicting myself."

"Now, Mr. Cross, there is at least an apparent contradiction. I wish you would explain it. If holding for value is necessary in the one case, why not in the other? What do you say, Mr. Crane?"

#### Sponge Thrown Up in Third Round

"My mind is a blank", he quickly replied.

"The reason, gentlemen," resumed the lawyer, "is that in the first case the one who fraudulently obtained the note made the gift, and the law may presume collusion; but in the last case, the transfer was a 'holder in due course,' and she may make the transfer by gift without destroying the donee's right to collect."

“Ah, I see.”

“Mr. Cross, I am willing to concede, without going further, that you have won your wager. Just tell me this, however. What would happen if this donee, who is apparently regarded as a holder in due course, should transfer the note to the man who originally obtained it by fraud?”

The lawyer looked from one to another, but no comments were offered. All seemed quite dumfounded at their ignorance of law, and unwilling to risk a further disclosure.

“What do you think, Mr. Crane?”

“I refuse to think, Mr. Cross. I do know, however, that I shall be ignorant no longer. These subjects so closely affect my business, that I must make a systematic study of commercial law before I get a serious jolt. I thank you most sincerely for the evident good you have done me to-night.”

“I suppose”, said Hardy, daring the laughter sure to follow a mistake, “that since this man who was a holder in due course, whether by gift or value, transferred the note to another holder in due course, that this holds good, regardless of the identity of the final transferee, and he could collect. Am I right, Mr. Cross?”

“I must say you are not. The law will not permit the person who originally obtained the note by fraudulent practices to be placed in a different position from that in which he was at first. In the eyes of the law, he is a constructive trustee of the note for the drawer, and must surrender it to save the latter from

loss. This holder can never become a holder in due course."

## PRINCIPAL AND AGENT

No little business can be transacted at first hand, it follows that the relationship of principal and agent is a very important one, and it is equally important that we know when the relation is established, and what our obligations and rights under any existing conditions may be.

## THE COST OF IGNORANCE

The story is told of a real estate agent who lost an earned commission on a deal thru ignorance on these points. It was especially hard because he deserved the reward, was innocent of wrongdoing, and, as a matter of fact, had injured no one. Yet the law governing the relation between principal and agent is definite and permitted the principals in this case to recover the commissions paid.

Two-thirds of the real property on the main business street of the town was owned by George O'Malley. O'Malley was recognized locally as a merciless, bargain-driving landlord, and one who never took the short end of a deal. As men say, he would sell the shirt off his back, providing he profited thereby. He quoted \$50,000 as the figure at which he would sell a three-story building located on one of the main corners—just double the cost to him.

Charles Golden was a comparatively new hand in the real estate business. Along with many other agents, he received an inquiry from the manager of

a large chain store organization, seeking information concerning a suitable location in the town. He wanted a location that was central, close to competitors; the building must be spacious, with at least two floors available for their own purposes. He offered one per cent of the purchase price to the agent engineering the deal.

### EASY MONEY

O'Malley's building fitted the requirements. Golden saw the opportunity. In a few minutes he was in O'Malley's office. Almost as quickly he was out again with a three-days option for \$50,000 in his possession. He wired the prospective purchaser, stating conditions. The next day the manager appeared in town, readily saw the advantages of the site, and that night the deal was put thru.

The following day our real estate agent pocketed two checks, one from O'Malley for \$1,000, on the sale price, and another from the corporation for \$500. That wasn't bad in war times. But one month later the joy departed. O'Malley, learning of the two checks for one transaction, brought suit at once for the return of the commission paid. Golden, surprised and hurt at the accusation of double-dealing, sought advice of counsel. He soon learned that he had violated the law and could be forced to return both commissions. His attorney quoted a section of the law governing the relation between principal and agent:

An agent cannot without consent of both parties be the agent of both of them and receive double compensation. In such a case he loses the right to all compensation.

It is entirely immaterial whether or not an agent betrayed a trust or did anything unfair. He may have acted in good faith, as did Golden, and without any disadvantage to his principal. The rule will simply be applied that all shall be turned to the benefit of his principal. He must lose the right to compensation, and if it has been paid, it may be recovered.

### KNOWLEDGE THAT PROTECTS

Chapter XIX of the present assignment presents a clear distinction between the relation of principal and agent and the relation of master and servant. Sometimes you may find it difficult to say whether a certain person is an agent or a servant, yet there is a well-defined line of demarcation. You should know this difference, since the acts of one may bind his employer, while those of the other may not bind him. A careful reading of the current assignment will convince the wideawake business man that the knowledge of commercial law is essential.







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